

## GUJARAT HIGH COURT

J.D. Kapadia

Vs.

Union of India

Spl. C.A. No. 1273 of 1967

(P.N. Bhagwati, C.J. and D.A. Desai, J.)

08.04.1970

### JUDGMENT

#### **P.N. Bhagwati, C.J.**

1. This petition raises an interesting question as to the pension rights of a person belonging to the former Indian Civil Service who continued to serve under the Government of the Dominion or the Government of a Province after the Independence of India. Prior to 15th August 1947 when India became independent, there was a Civil Service of the Crown in India known as the Indian Civil Service to which recruitment was made by the Secretary of State for India. The petitioner was appointed to the Indian Civil Service by the Secretary of State on 12th October 1931 and like all persons recruited to that Service, he was required to enter into a covenant by means of an Indenture executed between himself and the Secretary of State. He was allotted to the Civil Service Cadre in the Province of Bombay and he continued to serve in connection with the affairs of the Province of Bombay up to the date when power was transferred under the Indian Independence Act, 1947. The effect of the transfer was, as we shall presently point out, to bring about an automatic and legal termination of service on the date of independence and on such termination, it was "open to the servant concerned either to decline to continue in the service of the new Government or to offer to continue his service and in case the individual servant intimated his desire to continue in service", the final option was with the Government of India whether to continue him or not. A communication dated 18th June 1947 was accordingly addressed by the Government of India to all members of the Secretary of State's Services including the petitioner requesting them to intimate within ten days from the receipt of the communication whether they wished to continue in service of the Government or desired to retire from service. In response to this communication, the petitioner, by his letter dated 23rd June 1947, intimated to the Joint Secretary to the Government of India, Home Department, that he wished to continue in service of the Government and on receipt of this intimation, the Government of India, in consultation with the Provincial Government, decided to continue the

petitioner in service after 15th August 1947 on "the Bombay Cadre" and informed the petitioner accordingly by a letter bearing some date in August 1947. The petitioner accordingly continued on and after 15th August 1947 to serve under the Government of Bombay. Section 10(2) of the Indian Independence Act, 1947, guaranteed to the petitioner and all other members of the former Secretary of State's services who continued on and after 15th August 1947 to serve under the Government of the Dominion or the Government of any Province, certain conditions of service and rights by providing that such person shall be entitled to receive from the Government of the Dominion or the Government of the Province which he is from time to time serving, or, as the case may be, which is served by the Courts in which he is from time to time a Judge:

"the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or, as the case may be, as respects the tenure of his office, or rights as similar thereto as changed circumstances may permit, as that person was entitled to immediately before the appointed day."

When the Constitution was enacted the same guarantee was continued under Article 314 and since that Article forms the basis of the claim made by the petitioner, we may set it out:

"314. Except as otherwise expressly provided by this Constitution, every person who having been appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India continues on and after the commencement of this Constitution to serve under the Government of India or of a State shall be entitled to receive from the Government of India and the Government of the State, which he is from time to time serving, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement."

Now since, as a result of transfer of power, the Indian Civil Service as a Secretary of State's Service came to an end, a new All India Service known as the Indian Administrative Service was constituted by the Government of India sometime after independence and formal legal shape was given to this new service by the enactment of the All India Services Act, 1951, and the framing of the Indian Administrative Service (Recruitment) Rules, 1954 under that Act. Rule 3 of these Rules provided that the Indian Administrative Service shall consist inter alia of members of the Indian Civil Service not permanently allotted to the judiciary. The petitioner accordingly became a member of the Indian Administrative Service by virtue of these Rules and continued to serve in the State of Bombay. On bifurcation of the State of Bombay, the petitioner was allotted to the State of Gujarat and on 29th August 1960, the petitioner voluntarily retired from service by tendering his resignation which was accepted by the Government of India. The Government of Gujarat thereafter, by a resolution dated 25th November 1960 sanctioned an annuity of Rs. 13,333.33 "as admissible under Article 561 of the Civil Service Regulations". Article 561 of the

Civil Service Regulations embodied condition of service of members of the Indian Civil Service as respects pension and as it stood immediately prior to 15th August 1947 it provided:

"561. An Officer who has been twenty-five years in the service counting from the date of his covenant or from the date of the despatch of the Secretary of State announcing his appointment (whichever may have been earlier) and who has rendered twenty-one years' active service, is entitled, on his resignation of the service being accepted, to an annuity of Rs. 10,666-10-8. The annuity is subject to a minimum of 1,000."

This Article was purported to be amended by the President in exercise of the powers conferred under the proviso to Article 309 of the Constitution and Section 3 of the All India Services Act, 1951, on 29th June 1957 and the Article as amended read as follows:

"561. An officer who has been twenty-five years in the service counting from the date of his covenant or from the date of despatch of the Secretary of State announcing his appointment whichever may have been earlier and who has rendered twenty-one years' active service is entitled, on his resignation of the service being accepted, to an annuity of Rs. 13,333-5-4 (Rupees 13,333.33 with effect from the 1st April 1957), if he is an Indian Officer, or being a Non-Indian Officer draws his pension in India, and to an annuity of Rs. 10,666-10-8 (Rs. 10,666-66 with effect from the 1st April 1957), subject to a minimum of 1,000, if he is a non-Indian Officer and draws his pension through the High Commissioner for India in London."

The annuity of Rs. 13,333.33 was obviously fixed by the Government of Bombay having regard to the amended Article 561 but even according to the unamended Article 561 the minimum pension of 1,000 calculated at the official rate of exchange then prevailing came to the same figure and the petitioner, therefore, accepted it and continued to receive it until the time when the rupee was devalued. As a result of devaluation, the amount of Rs. 13,333.33 ceased to represent the rupee equivalent of 1,000 became very much more than Rs. 13,333.33. The petitioner, therefore, claimed that by reason of the condition of service embodied in the unamended Article 561, he was now entitled to payment of the higher rupee equivalent of 1,000 according to the official rate of exchange but the Government of Gujarat took its stand on the amended Article 561 and contended that under it the petitioner was not entitled to anything more than Rs. 13,333.33 per annum. The petitioner thereupon filed the present petition claiming a declaration that the amended Article 561 was void and of no effect and the Unamended Article 561 still held the field and the petitioner was entitled to payment of the minimum annuity of 1,000 according to the official rate of exchange prevailing on the date of payment.

2. The question which, therefore, arises for determination is what is the pension to which the petitioner is entitled: is it the sum of Rs. 13,333.33 Under the amended Article 561 or is it the rupee equivalent of 1000 according to the official rate of exchange prevailing on

the date of payment under the condition of service embodied in the unamended Article 561? To answer this question it is necessary to go back a little into the history relating to the Indian Civil Service. The Indian Civil Service was a specially constituted service to which recruitment was made directly by the Secretary of State. Each person recruited to this service had to enter into a covenant with the Secretary of State and his conditions of service were to be found in the covenant and the rules made by the Secretary of State. Prior to the enactment of the Government of India Act, 1919, which amended the Government of India Act, 1915 by introducing Section 96B with effect from 23rd December 1919, there were in force certain rules known as the Civil Service Regulations which applied generally to all civil services under the Crown. They also contained inter alia certain rules such as those set out in Chapters XXV and XLIX which were applicable specially to the Indian Civil Service. Article 561 to which we have referred earlier was one such rule in Chapter XXV. So also there was another rule, namely, Article 983 in Chapter XLIX to which we shall have occasion to refer a little later. It does not appear clearly when the Civil Service Regulations were made and by what authority but that is not material in view of Section 96B Sub-section (4) of the Government of India Act, 1915. As already stated Section 96B was introduced in the Government of India Act, 1915 by the Government of India Act, 1919 and omitting portions immaterial it provided:

"96B. (1) xxx xxx xxx xxx xxx

(2) The Secretary of State in Council may make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of services, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor General in Council or to local governments, or authorise the Indian Legislature or local Legislatures to make laws regulating the public services:

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(3) The right to pensions and the scale and conditions of pensions of all persons in the civil service of the Crown in India appointed by the Secretary of State in Council shall be regulated in accordance with the rules in force at the time of the passing of the Government of India Act, 1919. Any such rule-; may be varied or added to by the Secretary of State in Council and shall have effect as so varied or added to, but any such variation or addition shall not adversely affect the pension of any member of the service appointed before the date thereof.

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(4) For the removal of doubts it is hereby declared that all rules or other provisions in operation at the time of the passing of the Government of India Act, 1919, whether made by the Secretary of State in Council or by any other authority, relating to the civil service of the Crown in India, were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied or added to by rules or laws made under this section.

The Civil Service Regulations were clearly and indisputably in operation at the time of the passing of the Government of India Act, 1919 and they were accordingly validated and confirmed by Section 96B Sub-section (4). Even if they had no statutory authority when they were made, they acquired statutory force by virtue of Section 96B Sub-section (4) and thereafter they continued as rules having statutory force. Vide the observations of S.R. Das J. as he then was in *Shyam Lal v. State of U.P.*<sup>1</sup> at Now Article 561 as it stood then was in a different form and it was as a result of an amendment made by the Secretary of State in exercise of his power under Section 96B Sub-section (3) in 1921 that it acquired the form in which it existed immediately prior to 15th August 1947. Article 983 as it originally stood was also amended twice, once in 1925 and again in 1926 and the Article as amended was in the following form:

"983. (1) When payment of annuities or gratuities is taken at the Home treasury, it may be taken, at the option of the recipient, either in rupees converted into sterling

<sup>1</sup>372 paragraphs 8 and 10.

at such rate of exchange as the Secretary of State in Council may by order prescribe or at the fixed sterling minimum.

(2) When payment of annuities or gratuities is taken in India, it may be taken, at the option of the recipient, either in rupees or at the fixed sterling minimum converted into rupees at such rate of exchange as the Secretary of State in Council may by order prescribe.

xxx xxx xxx xxx xxx."

Articles 561 and 983 as they stood at the date of the coming into force of the Government of India Act, 1935 were therefore, clearly statutory rules relating to the Indian Civil Service made under Section 96B Sub-section (3) and by reason of Section 276 of the Government of India Act, 1935, they continued in force notwithstanding the repeal of the Government of India Act, 1915 and were deemed to be rules made under Section 247 of the Government of India Act, 1935. The result was that Articles 561 and 983 in the form in which we have reproduced them above were in force immediately prior to 15th August 1947 as statutory rules governing the members of the Indian Civil Service.

3. Now on the midnight of 14/1 5th August 1947 certain political changes of far-reaching importance took place in the country and power was transferred from the British Government to the Dominion of India. This was brought about by the enactment of the Independence Act, 1947, which came into force on 18th July 1947. The Indian Independence Act, 1947, set up two independent Dominions to be known respectively as India and Pakistan with effect from 15th August 1947. Each was to be a completely independent Dominion "with a wholly independent Legislature and with a completely independent Government free from any kind of fetters as regards their functioning either from the British Parliament or from the British Government". The Government of the Dominion however, was still to be carried on in the name of the Crown by the Governor General of India to be appointed by the Crown. Section 8 Sub-section (2) of the Indian

Independence Act, 1947, provided that except in so far as other provision may be made by the Constituent Assembly of the Dominion, each of the new Dominions and all Provinces and other parts thereof shall be governed as nearly as may be in accordance with the provisions of the Government of India Act, 1935; and the provisions of that Act, shall, so far as applicable, have effect subject to such omissions, additions, adaptations and modifications as may be specified in orders of the Governor General. The Governor General was given power by Section 9 of the Indian Independence Act, 1947, to make such provision as might appear to him to be necessary or expedient inter alia for making omissions from, additions to and adaptations and modifications of the Government of India Act, 1935, in their application to the separate new Dominions. In exercise of this power conferred under Section 9, the Governor General of the Dominion of India made the India (Provisional Constitution) Order, 1947 which came into force on 15th August 1947. Article 7(1) of this Order provided that, subject to any general or special orders or arrangement affecting his case, any person who immediately before the appointed day is holding any civil post under the Crown in connection with the affairs of the Governor General or Governor-General in Council or of a Province other than Bengal or the Punjab shall, as from that day, be deemed to have been duly appointed to the corresponding post under the Crown in connection with the affairs of the Dominion of India or, as the case may be, of the Province. This Article was obviously "designed to eliminate the necessity for making new orders of appointment with effect from 15th August 1947 to the enormous number of civil posts under the Dominion of India or of a Province". Vide paragraph 2 of the Note on Draft Provisional Constitution Order, July 30, 1947 given in Volume II of Indian Constitutional Documents: Munshi Papers at page 282. The members of the Secretary of State's services thus continued in service and were deemed to be appointed to the corresponding posts except those governed by "general or special orders or arrangements" affecting their respective cases and by virtue of Section 10(2) of the Indian Independence Act, 1947, they were entitled to receive the same conditions of Service as respects remuneration, leave and pension and the same rights as respects disciplinary matters or, as the case as similar fierier as change of circumstances may permit, as they were entitled to immediately before the appointed day, that is, 15th August 1947. The petitioner was, therefore, entitled to receive from the Government of India and the Government of Bombay the same condition of service as respects pension to which he was entitled immediately prior to 15th August 1947.

4. There was considerable controversy before us as to what was the condition of service as respects pension to which the petitioner was entitled immediately prior to 15th August 1947: whether it was to be found only in Article 561 or in Article 561 read with Article 983? We shall presently examine this controversy but before we do so, we may conveniently at this stage consider the question as to what was the effect of transfer of power on the Civil Service Regulations and particularly Articles 561 and 983. The argument of the petitioner was that on transfer of power the Indian Civil Service came to an end and Articles 561 and 983 which were specially applicable to members of the Indian Civil Service therefore, became obsolete and ceased to be applicable to those members of the Indian Civil Service who continued on and after

15th August 1947 to serve under the Government of India or the Government of a Province. The petitioner of course hastened to make it clear that this did not mean that the condition of service embodied Article 561 ceased to apply to the members of the former Indian Civil Service who continued to serve on and after 15th August 1947. The condition of service set out in Article 561 undoubtedly continued to apply to them but that was because it was a condition of service as respects pension guaranteed by Section 10(2) of the Indian Independence Act, 1947, and not because Article 561 continued to apply to them proprio vigore. Articles 561 and 983 ceased to have validity and force from 15th August 1947 in relation to the members of the former Indian Civil Service and there was accordingly no question of amending these Articles and the purported amendment made on 29th June 1957 was futile. This argument of the petitioner requires serious and careful consideration.

5. The effect of transfer of power on the Secretary of State's Services and particularly the Indian Civil Service first came to be considered by the Supreme Court in an early decision reported in *State of Madras v. Rajagopalan*<sup>2</sup>, The Supreme Court in that case after analyzing the constitutional changes that took place on 15th August 1947 as a result of the enactment of the Indian Independence Act, 1947 pointed out that as a result of these constitutional changes:

"The resultant position was.(1) There was no further recruitment to a special covenanted service by the Secretary of State. (2) There was to be no statutory reservation of posts to be made by the Secretary of State. (3) The

<sup>2</sup> AIR 1955 SC 817

conditions of service as made by the Secretary of State n: longer continued in operation, (4) No right of appeal or approach to the Secretary of State for redress of any personal grievances relating to such servants, or right of compensation, etc. for any adverse action to be determined by the Secretary of State, continued to subsist.the essential structure of the Secretary of State's services was altered and the basic foundation of the contractual-cum-statutory tenure of the service disappeared. It follows that the contracts as well as the statutory protection attached thereto came to an automatic and legal termination."

This view taken in Rajagopalari's Case was reaffirmed by the Supreme Court in the case of *R.P. Kapur v. Union of India*<sup>3</sup>, and it was pointed out in that case that the effect of the decision in Rajagopalan's Case was as under:

".the conferral of Independence on India brought about an automatic and legal termination of service on the date of Independence. But all persons previously holding civil posts in India are deemed to have been appointed and hence to continue in service, except those governed by 'general or special orders or arrangements' affecting their respective cases. The guarantee about prior conditions of service and the previous statutory safeguards relating to disciplinary action continue to apply to those who are thus deemed to continue in service but not to others."

The Supreme Court reiterated in clear and positive terms that "after the transfer of power the Indian Civil Service as the Secretary of State's Service came to an end." The same question again came up for consideration before the Supreme Court in *Taraknath Ghosh v. State of Bihar*<sup>4</sup>, That was a case relating to another service of the Secretary of State known as the Indian Police but what was said there would apply equally to the Indian Civil Service. The petitioner in that case was recruited to the Indian Police by the Secretary of State on 25th January 1937 and on transfer of power he continued to serve under the Government of Bihar until he was absorbed in a newly constituted All India Service known as Indian Police Service by the Indian Police Service (Recruitment) Rules 1955 made by the Central Government for regulating discipline in the Indian Police Service. Dealing with this question the Supreme Court, after referring to the decisions in Rajagopalan's Case and Kapur's Case observed at page 1376 of the Report:

"Thus, it was clearly recognized by this Court that the Services constituted by the Secretary of State earlier disappeared with the passing of the Indian Independence Act, though persons, who continued to serve thereafter under the Indian Dominion or any Province, were entitled to certain rights in regard to remuneration, leave, pension and disciplinary matters. In view of this decision, it has to be held that, on the passing of the Indian Independence Act, the appellant ceased to be a member of the Service constituted by the Secretary of State; but he continued to serve the Government of India and the Province of Bihar, as a result of which certain rights relating to conditions of service and disciplinary matters, which were earlier applicable to him, were preserved. At the time when the Indian Police (Cadre) Rules were framed, the appellant was not a member of any regularly constituted

<sup>3</sup> AIR 1964 SC 787

<sup>4</sup> AIR 1968 SC 1372

Service and his position remained the same until, under the Recruitment Rules of 1954, he was included in the Indian Police Service. With effect from the date of enforcement of these Rules, he again became a member of a regularly constituted service and he could be competently included in that service, because on that date he was holding a cadre post, but was not a member of any other regular service. While he was simply holding a cadre post, there was no bar to the Central Government making a Rule under Section 3 of the Act so as to include him in the Indian Police Service. Consequently, that the Rules of 1955 did not apply to him must be rejected, because, when those Rules came into force the appellant was already a member of the Indian Police Service which service was governed by those Rules."

These observations leave no doubt that on transfer of power on 15th August 1947 the Indian Civil Service came to an end and the petitioner ceased to be a member of that service and was deemed to be appointed by the Government of India to a cadre post under the Government of Bombay. The petitioner held such cadre post without being a member of any regularly constituted service and this position continued until the making of the Indian Administrative

Service (Recruitment) Rules, 1954, when by Rule 3 he was absorbed in the Indian Administrative Service.

6. It is in the light of this position that we have to determine whether Articles 561 and 983 continued to apply to civil servants like the petitioner who were members of the Indian Civil Service immediately prior to 15th August 1947 and who continued on and after 15th August 1947 to serve under the Government of India or the Government of a Province. The Civil Service Regulations are divided into various Chapters and Articles 561 and 983 occur in Chapter XXV and XLIX which contain rules specially applicable to the Indian Civil Service. The headings of these Chapters as also the contents clearly indicate that these rules are applicable only to the Indian Civil Service and they do not apply to Government servants who do not belong to that service. The efficacy and operation of these rules is, therefore, dependent on the continued existence of the Indian Civil Service. If the Indian Civil Service comes to an end, say for example, it is disbanded, these rules would cease to have meaning and efficacy. They would become obsolete and ineffective for there would be no service to which they can attach or on which they can operate. They would no doubt continue as statutory rules by reason of not having been repealed but they would be without efficacy or operation. As pointed out by Lord Reid in *Earl of Antrim's Petition*, (1967) 691 @ 716: "A statutory provision becomes obsolete if the state of things on which its existence depended has ceased to exist so that its object is no longer attainable. Or putting it in another way, statutory provision is virtually or impliedly repealed if a later enactment bring to an end a state of things the continuance of which is essential for its operation." Here the constitutional changes that took place on 15th August 1947 brought about an "automatic and legal termination" of the Indian Civil Service. The Indian Civil Service came to an end on 15th August 1947 and since the operation of rules in Chapter XXV and XLIX including Articles 561 and 983 depended on the existence or continuance of the Indian Civil Service, these rules became obsolete and ineffective from 15th August 1947. Those who were members of the Indian Civil Service immediately prior to 15th August 1947 undoubtedly continued to serve under the Government of India or the Government of a Province as the case may be, subject to "general or special orders or arrangements" affecting their respective cases but they ceased to be members of the Indian Civil Service: they merely continued to serve in the cadre posts to which they were deemed to be appointed without being members of any regularly constituted service. Since they did not belong to the Indian Civil Service after 15th August 1947, they were obviously not governed by rules which were specially applicable to the Indian Civil Service. It must be remembered that the law attaching to a particular service or post is not like personal law which the incumbent carries wherever he goes-to whichever service or post. When a public servant is a member of a service or holder of a post, he is governed by the law applicable to that service or post unless there is specific provision providing differently. If he ceases to be a member of that service or holder of that post and becomes a member of another service or holder of another post, the law governing the former service or post will not continue to apply to him in the absence of specific provision to the contrary: he will then be governed by the law applicable to the latter service or post. Take for example a case where, as pointed out in *G.L. Shukla v. State*

*of Gujarat* <sup>5</sup>a State servant is transferred from civil service of the State to the Panchayat service of the State under the Gujarat Panchayats Act, 1961. On transfer, the law regulating civil service will cease to apply to him and he will be governed by the law regulating Panchayat service. Of course the law transferring him may provide in a given case that particular conditions of his former service shall continue to apply to him despite the fact that he is no longer a member of that service but in that case these conditions of service will apply to him because of a specific provision to that effect and not because he was at one time a member of that service governed by those conditions. The conclusion is therefore, irresistible that the rules in Chapters XXV and XLIX being specially applicable to the Indian Civil Service and to no other service or post became obsolete and ineffective from 15th August 1947 when as a result of constitutional changes the Indian Civil Service came to an end. This concept of obsolescence is also found recognized in Article 313 of the Constitution. That Article provides: "Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the Commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an all-India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution". According to this Article rules applicable to a public service or post would continue in force if the public service or post continues to exist after the commencement of the Constitution. If the public service comes to an end, rules applicable to the public service must ipso facto cease for there can be no question of continuing those rules when the public service to which they attach is no longer in existence. This view is also borne out by the following observations from the judgment of the Supreme Court in Rajagopalan's Case where Jagannadhadas J. summarising the effect of the constitutional changes that took place on 15th August, 1947 pointed out: "The resultant position was clearly this:.(3) The conditions of service as made by the Secretary of State no longer continued in operation." Articles 561 and 983 therefore became obsolete and ceased to apply proprio vigore to the members of the former Indian Civil Service and the purported amendment made in them was an exercise in futility. It was an attempt to amend Articles which were dead and inoperative and the attempt was clearly ineffectual.

7. But the question then arises: if the rules specially applicable to the Indian Civil Service became obsolete in their application to the former member; of that service from 15th

<sup>5</sup> VIII G.L.R. 833

August 1947, what were the conditions of service which applied to them? Obviously they could not be without conditions of service. They held cadre posts under the Government of India or the Government of a Province and they were therefore governed by the conditions of service applicable to these posts subject to the provisions of Section 10(2) of the Indian Independence Act, 1947 and Article 314 of the Constitution. It may be noted that Civil Service Regulations which acquired statutory force under Section 96B Sub-section (4) of the Government of India Act, 1915, contained not only rules specially applicable to the Indian Civil Service but also rules applicable generally to Government servants. The power of the Secretary of State under Section

96B extended to making rules for all services in India and at that time there was no distinction between Central Services and Provincial Services. The rules in Civil Service Regulations which were not specially applicable to any public services like the Indian Civil Service or to any special departments or special offices therefore governed all Government servants whether serving in connection with the affairs of the Centre or the Provinces. So also the Civil Services (Classification, Control and Appeal) Rules, 1930, made by the Secretary of State under Section 96B Sub-section (2) applied to all Government servants including those who subsequently under the Government of India Act, 1935 became part of the Provincial Services. Then there were also rules made by Provincial Governments subsequent to the coming into force of the Government of India Act, 1935, in relation to Provincial Services. All these rules were applicable generally to Government servants and since the members of the former Indian Civil Service held cadre posts under one Government or the other after 15 the August 1947, these rules-such of them as were relevant and appropriate-applied to them subject to the provisions of Section 10(2) of the Indian Independence Act, 1947. We have already referred to that section earlier and a plain reading of it makes it clear that it is intended to serve a two-fold purpose. It has a positive as well as a negative content. It confers on the members of the former Indian Civil Service a right to receive the same conditions of service as respects remuneration, leave and pension as they were entitled to immediately prior to 15th August 1947 and also by necessary implication guarantees that those conditions of service shall not be altered. It does not merely say that the conditions of service which they now shall not be changed. It is not a mere negative guarantee. It positively gives those conditions of service. That is the plain natural construction of Section 10(2) and it is also borne out by the following observations of Jagannathadas J. in Rajagopalan's Case: ".some of the conditions of service previously governing these persons were continued by Section 10(2) of the Indian Independence Act, 1947" (emphasis is ours). Same is the effect also of Article 314. It is, therefore, evident that though the rules specially applicable to the Indian Civil Service became obsolete and ineffective and ceased to floppy proprio vigore from and after 15th August 1947, the conditions of service contained in those rules as respects remuneration, leave and pension continued to apply to the members of the former Indian Civil Service by reason of Section 10(2) of the Indian Independence Act, 1947, and Article 314 of the Constitution.

8. That immediately takes us to the question: what were the conditions of service as respects pension to which the members of the Indian Civil Service were entitled immediately prior to 15th August 1947? The argument of the petitioner was that the conditions of service as respects pension were to be found in Article 561 as it then stood and according to that Article, the members of the Indian Civil Service were entitled on retirement to a pension of Rs. 10,666-10-8 subject to a minimum of 1000/-. This right to receive a minimum pension of 1000/-, said the petitioner, was conferred and guaranteed by Section 10(2) of the Indian Independence Act and Article 314 and the petitioner was, therefore, entitled to insist that he should receive the equivalent rupee value of 1000/-, according to the official rate of exchange prevailing on the date of payment. The principal answer given on behalf of the respondents was that by reason of the amendment of Articles 561 and 983 the petitioner being an Indian officer was entitled to receive

only the fixed sum of Rs. 13,333.33 by way of pension. But this answer based on the amendment purported to be made by the President by the notification dated 29th June 1957 is without substance. As we have already pointed out above, Articles 561 and 983 became obsolete and ineffective from 15th August 1947 and the purported amendment of these Articles was futile and meaningless; it was an ineffectual attempt to amend Articles which were dead and inoperative-an exercise in futility. The respondents were therefore not entitled to rely on the amendment for restricting the right of the petitioner to receive pension of the fixed sum of Rs. 13,333.33. The conditions of service as respects pension which applied to the petitioner were those contained in Article 561 and according to the respondents also Article 983 as they stood immediately prior to 15th August 1947 and since these conditions of service were guaranteed to the petitioner by Article 314 of the Constitution, it was not competent to the President to alter them except by a constitutional amendment. Of course since Article 314 opens with the words "except as otherwise expressly provided by this Constitution", if there is any express provision in the Constitution that the members of the former Indian Civil Service shall have different conditions of service as respects pension than those to which he was entitled immediately before the commencement of the Constitution, such express provision would prevail but the President cannot, by invoking the proviso to Article 309 or Section 3 Sub-section (3) of the All India Services Act, 1957 made under Article 312 prescribe conditions of service which would override the guarantee in Article 314. The power conferred on the President under the proviso to Article 308 is by the very terms of that Article subject to the other provisions of the Constitution which would include Article 314 and Article 312 does not make any express provision authorizing Parliament to make law prescribing conditions of service in derogation of Article 314. No rules can, therefore, be made by the President under the proviso to Article 309 or Section 3 Sub-section (1) of the All India Services Act, 1951 which would have the effect of altering the conditions of service guaranteed under Article 314. To take any other view would be to rob the guarantee of Article 314 of all its meaning and content. Therefore, even if it were possible to read the Presidential notification dated 29th June 1957 as an attempt to alter the conditions of service embodied in Articles 561 and 983 as they stood immediately prior to 15th August 1947, it would be invalid and of no effect, for such alteration could be made only by means of Constitutional amendment. The result is that the purported amendment of Articles 561 and 983 had no effect on the pension rights of the petitioner which, continued to be governed by the conditions of service as they prevailed immediately prior to 15th August 1947.

9. The respondents, faced with this situation, tried to extricate themselves out of it by putting forward a rather ingenious contention. Their argument was on the following lines. The conditions of service as respects pension which applied to the petitioner were to be found not in one Article alone, namely, Article 561 but in two Articles, namely, Articles 561 and 983. Article 983 consisted of two clauses. The first clause dealt with the situation where payment of pension is taken at the "Home Treasury" but there being no "Home Treasury" in existence after independence, this clause became obsolete and inoperative. The second clause provided that where payment is taken in India, the recipient may take in his option either Rs. 10,666-10-8 or

the rupee equivalent of 1000/- "at such rate of exchange as the Secretary of State in Council may by order prescribe". Under this clause, after the commencement of the Constitution, President must be deemed to have been substituted for the Secretary of the State and the power to prescribe the rate of exchange for determining the rupee equivalent of 1000/- would be exercisable by the President. The Presidential notification fixing the sum of Rs. 13,333.33 as pension though purporting to be issued under the proviso to Article 309 and Section 3(1) of the All India Services Act, 1951, could, therefore, be justified under this clause as amounting in substance to prescription of the rate of exchange for conversion of 1000/- and would bind the petitioner. This argument plausible though it may seem is, in our view, not well-founded and must be rejected. In the first place it is debatable whether Article 983 could be regarded as embodying a condition of service as respects pension guaranteed under Article 314. The argument of the petitioner was that it did not constitute a condition of service as respects pension since it did not deal with the substance of the obligation but merely provided for mode of payment of pension. The respondents on the other hand urged that the second clause by empowering the Secretary of State to fix a rate of exchange different from the official rate for payment of pension in India affected the substance of the obligation and it was, therefore, as much a condition of service as Article 561. We do not think it necessary to, resolve this controversy. We will assume for the purpose of argument that Article 983 constituted as much a condition of service as Article 561. Even so, the respondents cannot succeed in repelling the argument of the petitioner.

10. Since the conditions of service embodied in Articles 561 and 983 as they stood immediately prior to 15th August 1947 were conferred and guaranteed by Section 10(2) of the Indian Independence Act and Article 314, it is necessary in order to determine these conditions of service to read these Articles as if they were written out with pen and ink in Section 10(2) and Article 314. Now the first clause of Article 983 provided for a situation where payment of pension is taken at the "Home Treasury". But obviously there could be no "Home Treasury" after transfer of power on 15th August 1947. The concept of "Home Treasury" became totally non-existent in the changed situation arising as a result of transfer of power and the first clause of Article 983, therefore, became obsolete and inoperative from 15th August 1947 on the application of the principle laid down by the House of Lords in Earl of Antrim's Petition, (supra), to which we have already referred, What, therefore, survived under Section 10(2) and Article 314 was the second clause of Article 983. This clause provided that where payment of pension is taken in India, the recipient shall be entitled to receive at his option either Rs. 10,666-10-8 or the rupee equivalent of 1000/- "at such rate of exchange as the Secretary of State in Council may by order prescribe". But on transfer of power the Secretary of State also ceased to exist. As pointed out by Jagannadhadas J. in Rajagopalan's case: "the Secretary of State who as a Member of the British Cabinet acting in the name of the Crown and responsible to the British Parliament was exercising such control as was vested in him in respect of the affairs of India and in particular as regards these service completely disappeared". The latter part of the second clause of Article 983 as written out in Section 10(2) and Article 314 therefore, became meaningless since there was no Secretary of State who could exercise the power to prescribe the rate of exchange contemplated

in that provision. That part became obsolete and ineffective and the power conferred by it ceased to be exercisable. This obsolete part must, therefore, be erased while reading Articles 561 and 983 in Section 10(2) and Article 314. The respondents, however, contended that after transfer of power "Governor-General" and after the commencement of the Constitution "President" must be substituted for "Secretary of State in Council" and the latter part of the second clause of Article 983 could not, therefore, be deemed to have become obsolete and inoperative on the ground that the Secretary of State ceased to exist on transfer of power. The power which was formerly exercisable by the Secretary of State in Council said the respondents would now, after the commencement of the Constitution, be exercisable by the President and, therefore, the Presidential notification dated 29th June 1957 was within the scope of his power under the second clause of Article 983. This argument is based on the assumption that in the second clause of Article 983 as written out in Section 10(2) and Article 314. "Secretary of State in Council" could be read as substituted by "Governor-General" and after the commencement of the Constitution, by "President." Now undoubtedly if this assumption were well-founded, there would be no answer to the argument but we do not think there is any warrant for this assumption. We were referred by the learned Advocate General on behalf of the respondents to various adaptation orders made under the Indian Independence Act, 1947, as also under the Constitution and particularly, India (Provisional Constitution) Order, 1947, India Adaptation of Existing Laws Order, 1947, and the Adaptation of Laws Order, 1950, but none of these adaptation orders authorized substitution of "Secretary of State in Council" by "Governor General" or "President" in Section 10(2) or Article 314. Clause 10 of India Adaptation of Existing Laws Order, 1947, and Clauses 16 and 21 of Adaptation of Laws Order, 1950, would have undoubtedly availed the respondents if the question were whether "Secretary of State" should be read as substituted by "Governor-General" or "President" in Articles 561 and 983 but, as pointed out above, these Articles became obsolete and ineffective and ceased to apply proprio vigore from and after 15th August 1947 and it was only by force of Section 10(2) and Article 314 that the conditions of service as embodied in Articles 561 and 983 as they stood immediately prior to 15th August 1947 continued to apply to the members of the former Indian Civil Service. Unless, therefore, we find some adaptation order or some provision of law which permits substitution of "Secretary of State in Council" by "Governor-General" and "President" in Section 10(2) and Article 314, we cannot hold that according to the conditions of service guaranteed under Section 10(2) and Article 314, the President can prescribe the rate of exchange at which the minimum pension of 1000/- should be paid. It is also significant to note that the words "as similar thereto as changed circumstances may permit" in Section 10(2) and Article 314 qualify only "rights" and not "conditions of service". Section 10(2) and Article 314 provide that the members of the former Indian Civil Service shall have the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit but so far as the conditions of service are concerned, there is no such qualification. It was no doubt at one stage in the course of arguments faintly suggested by the learned Advocate General on behalf of the respondents that the words "as similar thereto as changed circumstances may permit" govern both "rights" and "conditions of service" but having regard to the language of the provision, it is not possible to accept that

construction. Grammar and context do not permit it. Since the words "as similar thereto as changed circumstances may permit" are not applicable to "conditions of service" it is not possible to suggest that by reason of the changed circumstances arising as a result of transfer of power, the conditions of service should be adapted by reading "Secretary of State" as substituted by "Governor-General" and "President". The respondents cannot, therefore, rely on the second clause of Article 983 as a source of power for issuing the Presidential notification fixing the sum of Rs. 13,333.33 as pension.

11. The same question can also be looked at from a slightly different angle. Let us examine once again what were the conditions of service as respects pension to which the members of the Indian Civil Service were entitled immediately prior to 15th August 1947. Article 561 conferred on them a right to receive a minimum pension of 1000/-. Article 983 made different provisions according as payment of pension was taken at the "Home Treasury" or in India. If payment was taken at the Home Treasury, the recipient could take, at his option, either Rs. 10,666.10.8 converted into sterling at such rate of exchange as the Secretary of State in Council may by order prescribe or the fixed minimum of 1000/-. If, on the other hand, payment was taken in India, he could take at his option either Rs. 10,666-10-8 or the fixed minimum of 1000/- converted into rupees at such rate of exchange as the Secretary of State in Council may by order prescribe. This mode of payment was intended to ensure to the recipient a minimum pension of 1000/-. He could always so exercise his option that in any event he could have a minimum pension of 1000/-. If the rate of exchange prescribed by the Secretary of State in Council was less than the official rate of exchange so that by taking payment in India he would get less than the real rupee equivalent of 1000/-, he could take payment at the "Home Treasury" and thereby receive the real value of 1000/-. Of course if the rate of exchange fixed by the Secretary of State in Council was higher than the official rate of exchange, the recipient would get more than the real value of 1000/- by taking payment in India, and would, therefore, be better off by taking payment in India than what he would be by taking payment at the "Home Treasury" where he would get only 1000/-. It is, therefore, obvious that under the conditions of service existing immediately prior to 15th August 1947, a member of the Indian Civil Service was in any event entitled to receive a minimum of 1000/- as pension. This was the substance of his conditions of service as respects pension and it was this substance which was conferred and guaranteed by Section 10(2) and Article 314. The petitioner cannot be deprived of this right to receive the real value of 1000/- as pension by adopting a construction which discards the first clause of Article 983 as obsolete and inoperative and gives effect to the second clause by substituting the word "President" for the words "Secretary of State in Council". The right of the petitioner to a minimum pension of 1000/- according to its real value at the official rate of exchange—a right which the petitioner had immediately prior to 15th August 1947 cannot be defeated by the President fixing a rate of exchange less than the official rate under the second clause of Article 983. It is a right which is conferred and guaranteed by Section 10(2) and Article 314 and it must be recognized and given effect to notwithstanding the Presidential notification fixing an amount less than the real value of 1000/- according to the official rate of exchange.

12. We are, therefore, of the view that the claim made by the petitioner is well-founded and the petitioner is entitled to receive from the Government a minimum pension off 1000/- according to the official rate of exchange prevailing on the date of payment and the Presidential notification dated 29th June 1957 does not stand in the way of the petitioner. We accordingly allow the petition and make the rule absolute by issuing a writ of mandamus directing respondents Nos. 1 and 3 to pay to the petitioner pension on the basis that he is entitled to a minimum pension of 1000/- according to the official rate of exchange prevailing on the date of payment. The respondents will pay the costs of the petition to the petitioner.

Petition allowed.